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SUPREME COURT, U.S.

83

CASE NO. 07-624

# IN THE SUPREME COURT OF THE UNITED STATES

**Peter E. Hendrickson, Petitioner**

**v.**

**United States, Respondent**

## Petition for Re-Hearing Of This Court's Order Denying My Petition For Writ of Certiorari to the United States Court Of Appeals for the Sixth Circuit

**Petitioner Peter E. Hendrickson**
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**Proceeding Pro Se**

## QUESTIONS PRESENTED IN MY PETITION

1. Whether the Court of Appeals erred in holding that the language of the 1954 Internal Revenue Code constitutes an entire, substantive replacement of all United States internal revenue law enacted prior to August 16, 1954 (and particularly as regards the summons authority), and is now the free-standing, independently enacted, whole body of federal internal revenue law, general and permanent in nature;

2. If not, does the language of section 7602 of the 1954 IRC concerning IRS (or Treasury Department) summonses and examinations actually authorize searches through the papers, effects and records of, or about, any person whatsoever, without distinction of context, the person's relationship to the federal government (or lack thereof), whether a waiver of Fourth Amendment protection has or has not been made, the existence of evidentiary cause of any kind (or lack thereof), and in the face of unchallenged sworn evidence that, in fact, no cause exists, and that the target of the summons is not within the scope of its lawful authority.

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## STATEMENT OF THE CASE

This case involves fundamental issues about the accurate scope and application of IRS summons authority never before litigated, yet critical to the proper deployment of that frequently-invoked, high-potential-for-abuse authority, and is of profound interest to the American people as a whole. The ruling of the Court below regarding those issues is in direct conflict with repeated rulings by this Court and at least the Fourth Circuit Court of Appeals, and rests on a misrepresentation in appellate proceedings of a single completely inapposite-- indeed, contrary-- ruling in a DC Circuit case, cited but never quoted. Nonetheless, the ruling below is already being used by the IRS in representations to other courts in similar cases. Thus, this matter is of immediate and significant importance.

The Internal Revenue Service (IRS) has issued a summons in an effort to conduct a search concerning Petitioner (hereinafter referred to in the first person), citing no cause, no connection between me and the federal government, and no waiver or other mechanism by which the statutory and/or Constitutional limits of the summons authority have been rendered moot in regard to me. This is the fifth such summons attempted by the IRS over the past several years-- the first was withdrawn by the agency, and the next three were dismissed on the motions of the United States Department of Justice after being challenged in district courts.

Like the others, this latest summons was issued in the face of timely and proper sworn tax returns establishing-- without reliance on deductions-- that I owe no outstanding obligation to the Respondent

(hereinafter: IRS) or its client, which return affidavits stand entirely unchallenged throughout the proceedings in this case. As in the previous cases, no evidence supporting the summons has ever been introduced.

THE IRS HAS NEITHER PRESENTED NOR ARGUED ANY LEGALLY MEANINGFUL CAUSE WHATEVER FOR ITS SEARCH, NOR ANY EVIDENCE OR ARGUMENT AS TO HOW OR WHY I AM NOT ENTITLED TO THE PROTECTIONS SPECIFIED IN THE FOURTH AMENDEMENT TO THE UNITED STATES CONSTITUTION. NOR HAS THE IRS PRESENTED EVIDENCE OF ANY CONTRACT BY THE TERMS OF WHICH, OR IN CONNECTION WITH WHICH, IT OR ANYONE ELSE CAN CLAIM A RIGHT TO LOOK THROUGH MY PAPERS AND EFFECTS.

Similarly, no Court which has addressed this matter thus far has presented such cause, evidence or contract, or alleged their existence. By means of the affidavits presented with my petition to quash, I have clearly and unambiguously rebutted any and all presumptions that may otherwise have been relied upon in this regard, and, in any event, made clear that it is my purpose to do so even if my affidavits may have failed to explicitly address some hidden, inscrutable presumption being (corruptly) relied upon by the IRS or courts.

> *Federal Rules of Evidence Rule 301. Presumptions in General Civil Actions and Proceedings*
>
> *In all civil actions and proceedings not otherwise provided for by Act of Congress or by these rules, a presumption imposes on the party against whom it is directed the burden of going*

*forward with evidence to rebut or meet the presumption, but does not shift to such party the burden of proof in the sense of the risk of nonpersuasion, which remains throughout the trial upon the party on whom it was originally cast.*

FURTHERMORE, IT IS CLEAR THAT A GOVERNMENT SEARCH OF OR FOR RECORDS RELATING TO "INCOME" CANNOT EXTEND TO RECORDS **NOT** RELATING TO "INCOME". My properly-filed sworn tax returns have indicated that no "income" was received during the years in regard to which the IRS wishes to search. NO EVIDENCE TO THE CONTRARY HAS BEEN PRESENTED. Thus, the IRS is clearly seeking to conduct a search of records entirely outside the scope of the government's lawful interest in every possible way. In short, the search the IRS wishes to conduct is illegal.

I responded to the summons with a timely petition to quash under the provisions represented at 26 USC 7609 and invoking the jurisdiction of the District Court as specified at 7609(h), citing the provisions of law explicitly specified in multiple rulings of this Honorable Court as being those in which the IRS summons authority resides, and furnishing the District Court with evidence (unchallenged to this day) that I am not among those about whom such summonses may issue, per the plain language of those provisions. The District Court issued a ruling against my petition without any appearance or filing by the IRS, without proceedings of any kind, and without explanation.

I appealed to the Sixth Circuit Court, again

presenting my affidavits and citing the language of the applicable law and the relevant declarations by the People in the United States Constitution, by multiple Congressional authorities, and by this Court in multiple, explicit rulings unambiguously declaring that the language of the 1939 IRC is properly reflective of the applicable law regarding the summons authority the IRS seeks to exercise in this case, and that the language of the 1954 IRC IS NOT properly representative of that authority. Nonetheless, after being fully briefed, the Sixth Circuit panel said,

*"Nawww! The Supreme Court is wrong, Congress is wrong, EVERYBODY'S WRONG! Even though it said it didn't at the time, still says it didn't, and the Supreme Court has repeatedly studied the Congressional record and in no uncertain terms said it didn't (and the Constitution says it can't, even if it wanted to), in 1954 Congress:*

- *Enacted a 3.4 million word statute and entirely repealed all previous related law:*

*"...the government correctly notes that the language of 26 U.S.C. § 7602 does not in fact differ from the Internal Revenue Code of 1954, § 7602, ch. 736, 68 A Stat. 3,901 -02, in which Congress first enacted § 7602, or from subsequent amendments to that section. Simply put, the language of 26 U.S.C. § 7602 is positive law either by enactment as such by Congress or by authority of the Statutes at Large. Hendrickson's contention that the Internal Revenue Code of 1954 did not replace or supercede prior statutory authority from which the legislation was derived is patently meritless."*

- *Threw the Fourth Amendment on the trash-heap and declared that the executive branch can conduct a search through the papers and effects of any entity, live or artificial (and if artificial whether a creature of Congress or of anyone else, even a foreign sovereign), without any cause other than mere curiosity, on the pretext of determining whether a tax return, if filed, was accurate, or whether one SHOULD have been filed, if one was not-- in other words, a pretext without any limitations whatever."*

(In this latter regard, the appellate court was careful to deploy the term "relevant" in describing what papers the government can poke through in exercising this authority: *"The IRS is authorized to examine any relevant documentation and summon any person in possession of any relevant information or documentation when conducting a tax investigation. 26 U.S.C. § 7602(a)."* Simultaneously, however, the court disregards this important consideration by refusing to restrain the government in pursuing its search through documentation the relevance of which HAS CLEARLY AND UNAMBIGUOUSLY BEEN REFUTED, AND WHICH THE GOVERNMENT HAS FAILED TO ESTABLISH. Indeed, the issue of relevance is the very essence of the statutory provisions reflected accurately in the 1939 IRC which the government seeks to evade in its arguments in the appellate court and which that court disregards by its erroneous ruling.)

## SUBSTANTIAL GROUNDS NOT PREVIOUSLY PRESENTED AS TO WHY MY PETITION SHOULD BE GRANTED

1. In denying my petition for writ of certiorari, this Court has thereby declared its own previous rulings as to the legal standing and significance of the language of section 7602 of the 1954 IRC to have been in error or no longer valid. However, the Court's previous rulings on this subject CANNOT have been in error or no longer be valid.

Those previous rulings were not matters of interpretation, but were simple observations and acknowledgements of expressly-stated and recorded Congressional intent. Congress declared the language of section 7602 of the 1954 code to represent no substantive change of the authority, scope or application of the summons power from that presented in the sections of the 1939 IRC from which the 1954 language is derived. This is an immutable fact, and is what has been accurately observed by this Court in its previous relevant rulings:

> *"Section 7602 derives, assertedly without change in meaning, from corresponding and similar provisions in 3614, 3615, and 3654 of the 1939 Code.* " United States v. LaSalle National Bank, 437 U.S. 298 (1978) (referencing H. R. Rep. No. 1337, 83d Cong., 2d Sess., A436 (1954); S. Rep. No. 1622, 83d Cong., 2d Sess., 617 (1954)).
>
> *"...[7602] has its ascertainable roots in the 1939 Code's 3614 and, also, 3615 (a)-(c)..."* Donaldson v. United States, 400 U.S. 517 (1971);
>
> *"As we said in United States v. Ryder, 110 U.S. 729, 740 (1884): "It will not be inferred that the*

*legislature, in revising and consolidating the laws, intended to change their policy, unless such intention be clearly expressed." (Citations omitted).* Fulman v. United States, 434 U.S. 528 (1978);

*"...absent [substantive] comment it is generally held that a change during codification is not intended to alter the statute's scope. See Muniz v. Hoffman, 422 U.S. 454, 467-474 (1975)."* Walters v. Nat. Assn. of Radiation Survivors, 473 U.S. 305 (1985);

*"Under established canons of statutory construction, "it will not be inferred that Congress, in revising and consolidating the laws, intended to change their effect unless such intention is clearly expressed." Anderson v. Pacific Coast S.S. Co., 225 U. S. 187, 199 (1912); see United States v. Ryder, 110 U. S. 729, 740 (1884)."* Finley v. United States, 490 U.S. 545, 554 (1989).

To rule, or let stand a ruling, to the contrary is incoherent (and irreconcilable with undisputed facts).

THUS, THIS COURT'S DENIAL OF MY PETITION CONSTITUTES AN IRRECONCILABLE CONFLICT WITH ITS OWN PREVIOUS RULINGS.

2. There is a public need for clarity and forthrightness about the fundamental issue involved in this case. That issue can be summarized as follows: Since merely stating a reason for wanting to conduct a search is not sufficient; and no law, rule, or decree of Congress, the Executive, or any other entity-- no matter when made, or what its wording, short of a

Constitutional amendment-- is sufficient; on what basis, and by what authority, mechanism or presumption is the government seeking to conduct a search in disregard of the provisions of the Fourth Amendment, and being allowed to do so by the Courts?

Not only has the government no more inherent right to seek and examine my papers in satisfaction of its speculations or curiosity than I have to command the release of, and look through, records concerning my neighbor, but the Fourth Amendment to the United States Constitution specifically prohibits any governmental effort to do these things. No legal nuance is relevant-- THE GOVERNMENT IS PROHIBITED FROM SEEKING THE RECORDS IN THE ABSENCE OF PROBABLE CAUSE, SWORN TESTIMONY AS TO SAME, AND A WARRANT.

Something apparently is being relied upon by the government and the Courts in the instant case and the tens of thousands of other such searches carried on over the years to escape this prohibition, and it is the Constitutional responsibility of this Honorable Court to plainly and precisely declare what that "something" is so that targets of these summonses can address it fairly and squarely. The status of the 1954 IRC is immaterial to this question, since there simply is nothing that Congress could have done or said in any enactment or combination of enactments which can lawfully evade or diminish the specifications of the Fourth Amendment. As this Court has properly observed:

> *"Where rights secured by the constitution are involved, there can be no rule making or legislation which would abrogate them."* Miranda v. Arizona, 384 U.S. 436 (1966)

The statutory particulars of the summons authority reflected in the 1939 IRC do offer a selection of "somethings" which presuppose relations between the target of a summons and the United States in which the provisions of the Fourth Amendment would not apply. But the lower courts are claiming in this case that those provisions are irrelevant, and this Court's denial of my Petition says the same. We are thus left to presume a "something else" which is undeclared by the United States in litigating these cases and unsought by the courts-- a plain abrogation of judicial responsibility in which a litigant's declared "right to act" is being upheld by the courts without any demonstration of a basis for that right despite the existence of such a basis having been disputed by the other side in the contest. Or we are left to presume simple lawlessness by both the United States and the courts.

Tens of thousands of Americans are watching this particular case right now, and over the course of time millions will be intimately familiar with it. All Americans have a profound interest in this question, which bears directly on the fundamental nature of the relationship between Citizen and government in America. That relationship cannot tolerate the operation of legal mysteries by means of which the government accomplishes means or ends which it might find desirable but which are, on their face, not permitted to it. Thus, the granting of my Petition is a matter of immediate and considerable public interest.

3. I have presented overwhelming evidence in my petition that the 1954 IRC is NOT a replacement for all previous law relevant to the instant case or

otherwise. However, if the 1954 code WERE the law, this would mean that Congress has thereby removed natural persons from the ambit of much, if not all, of the internal revenue law.

The actual statutes-at-large include "natural person" in the legal definition of "person" to be used in the law:

> *"And where not otherwise distinctly expressed or manifestly incompatible with the intent thereof, the word "person", as used in this title, shall be construed to mean and include a partnership, association, company, or corporation, as well as a natural person."* Revised Statutes of 1873, §3140.

The IRC of 1954, however, omitted natural person from the definition of the term that it presents, substituting "individual", "trust" and "estate":

> *(1) Person*
> *The term "person" shall be construed to mean and include an individual, a trust, estate, partnership, association, company or corporation.* IRC of 1954, 1986 (26 USC), §7701(a)(1).

Since "individual" does not necessarily mean "natural person":

> *"As a noun, this term denotes a single person as distinguished from a group or class, and also, very commonly, a private or natural person as distinguished from a partnership, corporation, or association; but it is said that this restrictive signification is not necessarily inherent in the word, and that it may, in proper cases, include*

> *artificial persons.*" Black's Dictionary of Law, (2nd edition),

and since Congress must be taken to have made the change deliberately:

> "'*[W]here Congress includes particular language in one section of a statute but omits it in another ..., it is generally presumed that Congress acts intentionally and purposely in the disparate inclusion or exclusion.*'" Russello v. United States, 464 US 16, (1983),

under the doctrine that the 1954 code is itself the law, it must be presumed that natural persons are no longer included when the term "person" is used therein.

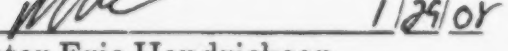
I am, in fact, a natural human being. Thus, if the contention that the IRC of 1954 is now the law is allowed to stand (and without regard to any other consideration), I am not within the class of "any person", either for purpose of the summons authority or any other provision of internal revenue legislation! Consequently, the lower courts should have quashed the summons involved in this matter on that basis alone (and by virtue of a doctrine which the denial of my Petition will affirm and which all of America will find to be of intense interest...)

## CONCLUSION

The denial of my Petition creates an irrevocable conflict between rulings of this Court, and in a matter not even of mere interpretation, but as to recorded facts previously observed and acknowledged by this Court. The denial is of intense public interest, as it is supportive of an inherently arbitrary and capricious behavior by the United States in an effort to evade either restrictive provisions of the United States Constitution or fundamental principles of due process and equity, or both. The denial of my Petition flies in the face of long-established canons of statutory construction, while supporting a legal conclusion which either eviscerates the majority of internal revenue law as administered for the last 54 years or will lead to extensive litigation in that regard, and which itself invalidates the summons at issue in this case.

The order denying my Petition for Writ of Certiorari should be re-heard and the Petition should be granted.

Respectfully submitted



1/29/07

Peter Eric Hendrickson
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## CERTIFICATE OF GOOD FAITH AND COMPLIANCE WITH RULE 44.2

I hereby certify that this Petition for Re-Hearing is presented in good faith and not for delay, and is restricted to the grounds specified in Rule 44.2.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on this 29th day of January, 2008.

Peter Eric Hendrickson
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## CERTIFICATE OF GOOD FAITH

I hereby certify that the Petition for Re-Hearing to which this certificate is attached pursuant to Rule 44.1 is presented in good faith and not for delay.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on this 29th day of January, 2008.

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